

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-07/09-399
)
 Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Department for Children and Families, Health Access Eligibility Unit (HAEU) denying eligibility for Vermont Health Access Program (VHAP) and for Catamount Health Premium Assistance Program (CHAP) benefits. The issue is whether the twelve month disqualification period should be applied. The facts are not in dispute.

FINDINGS OF FACT

1. The petitioner separated from his partner several months ago. Petitioner and his ex-partner, N.T., have one child. They were never married; however, they were considered domestic partners by N.T.'s employer. While petitioner lived with N.T., he received health insurance coverage through N.T.'s employer. Petitioner's health insurance coverage ended on or about July 1, 2009.

2. The petitioner filed an application for health coverage on or about June 22, 2009. He disclosed to HAEU

that he had been previously insured during the prior twelve months.

3. The Department sent a Notice of Decision dated July 11, 2009. The Department denied petitioner both VHAP and CHAP because his health insurance ended in the past twelve months.

4. The petitioner appealed the denial of VHAP and CHAP on or about July 23, 2009.¹ He argues that the end of his relationship with N.T. should be treated as a divorce by the Department.

5. Petitioner has a chronic health condition.

ORDER

The Department's decision is reversed.

REASONS

The Vermont Health Access Program (VHAP) was created to "provide health care coverage for uninsured or underinsured low income Vermonters". 33 V.S.A. § 1973(b). W.A.M. § 4000. The VHAP program provides health insurance for households

¹ Petitioner obtained custody of a child from a prior relationship. He was advised to apply for Medicaid when submitting the child's Dr. Dynasaur application to determine whether he meets the income and resource provisions of the Medicaid program.

whose countable income is equal to or less than 185% of the Federal Poverty Level (FPL).

Health care coverage was further expanded when the Vermont Legislature passed Act 191, An Act Relating to Health Care Affordability in 2006 that includes premium assistance for uninsured adult Vermonters who are not eligible for the Vermont Health Access Program (VHAP) and whose income is equal to or less than 300% of the Federal Poverty Level (FPL).

A major criterion for both VHAP and CHAP is that the applicant fit the definition of "uninsured". A major reason for these provisions was and is to prevent employers ending employment sponsored health insurance benefits and dumping their employees into state sponsored programs.

Both programs are Medicaid waiver programs that have been approved by the Department of Health and Human Services through its Centers for Medicare and Medicaid Services. The waiver was amended on October 2, 2007; the amendment added the following eligibility criteria:

To be eligible for premium assistance, adults not otherwise eligible for OVHA programs must have been uninsured for at least 12 months, unless they lost coverage due to one of the following reasons: loss of employment; death of the principal insurance policyholder; divorce or dissolution of a civil union; no longer qualified as a dependent under the plan of a

parent or caretaker relative; no longer qualifying for COBRA, VIPER, or other state continuation coverage; or a college-sponsored insurance plan became unavailable because the individual graduated, took a leave of absence, or otherwise terminated studies.

The applicable VHAP regulation defines uninsured at W.A.M. § 4001.2(c) to include:

An individual who lost private insurance or employer-sponsored coverage during the prior 12 months for the following reasons:

(1) The individual's coverage ended because of:

(i) Loss of employment, including a reduction in hours that results in eligibility for employer-sponsored coverage, unless the employer has terminated its employees or reduced their coverage for the primary purpose of discontinuing employer-sponsored coverage and establishing their eligibility for Catamount Health.

...

(iii) Divorce or dissolution of a civil union;

...

The applicable CHAP regulations at W.A.M. § 4101(1) mirror the VHAP regulations.

The petitioner argues that he lost his insurance through no fault of his own. He argues that his situation is analogous to a divorce and that he should be considered "uninsured" for the purposes of either VHAP or CHAP.

Many health insurance plans, including health insurance offered by the State of Vermont, allow an employee to add

domestic partners to his/her health insurance. When the domestic partnership ends, the non-employee domestic partner is dropped from coverage. Just as divorce ends coverage, the termination of a domestic partnership ends coverage.

The Vermont Legislature enacted the VHAP and CHAP programs to expand health insurance coverage to low income Vermonters. Petitioner fits within this category.

The Board has applied the Common Benefits Clause of the Vermont Constitution in VHAP cases. Fair Hearing Nos. 16,414 and 16,748. Chapter 1, Article 7 of the Vermont Constitution states:

That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community, and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community.

The Board, on page 24 of Fair Hearing No. 16,748, incorporated the Vermont Supreme Court description of the Common Benefits Clause from Baker v. State, 170 Vt. 194, 206 (1996) that the Common Benefits Clause "has consistently demanded in practice that statutory exclusions from publicly-conferred benefits and protections be 'premised on an appropriate and overriding public interest'", citing State v. Ludlow Supermarkets, Inc., 141 Vt. 261, 268 (1982).

The Department has an "appropriate and overriding public interest" to prevent employers from dropping medical insurance plans; the Department does not have "an appropriate and overriding public interest" to deprive individuals who are no longer domestic partners of VHAP or CHAP coverage; especially when providing such coverage in cases of marriage or civil union terminations.

The regulation cannot be applied to exclude petitioner from receiving benefits. The Department's decision is reversed and remanded for consideration of the income eligibility factors for VHAP and CHAP. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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